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K R A S K I N, L E S S E & C O S S O N, L L C
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

ORIGINAL

2120 L Street, N W., Suite 520
Washington, D.C 20037

Telephone (202) 296-8890
Telecopier (202) 296-8893

November 26, 2003

RECEIVED

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

96-45

NOV 26 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules of Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc. and Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules

Dear Ms. Dortch:

Attached please find an original and four copies of the Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules and Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules being filed by Heart of Iowa Communications Cooperative and Iowa Telecommunications Services, Inc.

We are submitting the requisite filing fees and FCC Form 159 Remittance Advice by courier to Mellon Bank, Pittsburgh, Pennsylvania on this date.

Please acknowledge receipt on the "stamp and return" duplicate document attached for this purpose. All correspondence and inquiries concerning this filing should be addressed to the undersigned.

Respectfully submitted,



David Cosson

Clifford C. Rohde

Counsel for Heart of Iowa Communications Cooperative

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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NOV 26 2003

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Heart of Iowa Communications)
Cooperative)
)
and)
)
Iowa Telecommunications Services, Inc.)
d/b/a Iowa Telecom)
)
Joint Petition for Waiver of the)
Definition of "Study Area" of the)
Appendix-Glossary of Part 36 of the)
Commission's Rules)
)
Petition for Waiver of Sections)
69.3(e)(11) and 69.605(c) of the)
Commission's Rules)

CC Docket No. 96-45

To: The Commission

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,¹ Heart of Iowa Communications Cooperative ("Heart of Iowa") and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom ("Iowa Telecom") (together, "Petitioners"), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules. Additionally, Heart of Iowa

¹ 47 C.F.R. § 1.3

seeks a waiver of the definition of “average schedule company” included in Section 69.605(c) of the Commission’s Rules and of Section 69.3(e)(11) of the Commission’s Rules concerning participation in the National Exchange Carrier Association (“NECA”) carrier common line tariff.²

Petitioners request these waivers to enable Heart of Iowa to complete its proposed purchase from Iowa Telecom of the latter’s Conrad, Eldora and Steamboat Rock telephone exchanges in Iowa (“the three exchanges”). Petitioners also request that the three exchanges be removed from Iowa Telecom’s study area in Iowa and added to Heart of Iowa’s incumbent study

² Because Heart of Iowa is an average schedule company that wishes to retain its average schedule status, Heart of Iowa submits that it is not required to seek waiver pursuant to Section 61.41(c)(3) of the Commission’s rules. *See, e.g., Norway Rural Telephone Company and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, Joint Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix—Glossary of the Commission’s Rules, Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission’s Rules*, CC Docket No. 96-45, Order, 17 FCC Rcd 20127 (Tel. Acc. Pol. Div. 2002) (“Norway Order”); *All West Communications, Inc., et al., Joint Petition for Waiver of the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules; Petition for Waiver of Sections 61.41(c), 61.41(d) and 69.3(e)(11)*, Order, 16 FCC Rcd 4697 (Acc. Pol. Div. 2001) (“All West Order”).

Only in the event the Commission denies Heart of Iowa’s petition for waiver of Section 69.605(c) of the Commission’s Rules, Heart of Iowa seeks waiver of the price cap “all or nothing” rule in Section 61.41(c)(2), to permit Heart of Iowa to operate under rate-of-return regulation after purchasing three small exchanges from a price cap carrier. In the event such waiver request is required to be contemplated, Heart of Iowa submits that the “gaming” issue of concern to the Commission is not present here. Heart of Iowa is a very small carrier—significantly smaller in fact than any carrier subject to mandatory price caps—that is not seeking to shift costs between price cap and non-price cap affiliates. Nor is Heart of Iowa attempting to establish a rate base by switching back and forth between rate-of-return regulation and price cap regulation. Indeed, Heart of Iowa would be prepared to have such grant of its price cap “all or nothing” waiver request, if required to be made, conditioned upon prior Commission approval should Heart of Iowa subsequently take the unlikely course of seeking to elect price cap regulation. *See Nemont Telephone Cooperative, Inc. et al. Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission’s Rules, Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(11) and 69.605(c) of the Commission’s Rules*, Order, 18 FCC Rcd 838, ¶¶ 20-24, (Wir. Comp. Bur. 2003) (“Nemont Order”).

area.³

The Commission is requested to review and approve this Petition expeditiously. The facts and circumstances supporting grant are similar in material respects to those involved in waiver requests that have been approved recently.⁴ Prompt Commission approval will enable Petitioners to focus time and resources on the exchanges to be served immediately following the purchase transaction, which Petitioners seek to close on or about January 31, 2004.

I. INTRODUCTION AND SUMMARY

Iowa Telecom is a price cap incumbent local exchange carrier (“ILEC”) that owns and operates approximately 257,000 access lines in nearly 300 exchanges in the state of Iowa. Iowa Telecom owns and operates approximately 174 access lines in the Conrad exchange, 574 in the Eldora exchange, and 67 in the Steamboat Rock exchange—a total of only 815 lines that are the subject of this Petition. After the transaction, Iowa Telecom will continue to provide local telephone service in Iowa and will retain its study area for its remaining exchanges.

Heart of Iowa owns and operates, as an average schedule ILEC, approximately 2487 access lines in seven exchanges (Albion, Ferguson, Green Mountain, Haverhill, Liscomb, New

³ As described below, Heart of Iowa’s ILEC operations have a study area code, 351297, distinct from that of its CLEC operations.

⁴ See, e.g., *Dickey Rural Telephone Cooperative, et al and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of “Study Area” Contained in the Part 36, Appendix-Glossary of the Commission’s Rules, Petition for Waiver of Sections 69.3(e)(11) and 69.605(c)*, Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) (“*Dickey Rural Order*”); *Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al, Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules*, Memorandum Opinion & Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) (“*Baltic Order*”).

Providence, and Union/Whitten) in the state. It intends to bring the purchased exchanges into its ILEC study area.

Heart of Iowa also operates as a facilities-based competitive local exchange carrier (“CLEC”) in the Conrad, Eldora, and Steamboat Rock exchanges, in which it currently owns and operates 937, 1617, and 190 CLEC access lines in the respective exchanges (a total of 2744 lines). The Universal Service Administrative Corporation (USAC) identifies Heart of Iowa’s CLEC operations with a distinct Study Area Code (359005). Upon completion of the acquisition, Heart of Iowa will discontinue CLEC operations in the exchanges and transfer the CLEC subscribers to the ILEC operation.⁵

As will be discussed in more detail below, the factors that the Commission requires for a study area waiver are, or will be, all present in this case. (1) the transfer of the three exchanges from Iowa Telecom to Heart of Iowa will not adversely impact the Universal Service Fund (“USF”), (2) the Iowa Utilities Board of Iowa (“IUB”) does not object to this proposal, and (3) the public interest will be served by granting the waiver. At the same time, because Heart of Iowa is a small average schedule carrier, the conditions for waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission’s rules are present.

Related to this Petition, on this day, the Petitioners are also filing an Application pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”),⁶ seeking the Commission’s consent to transfer control of the three exchanges being acquired by Heart of

⁵ Because Heart of Iowa’s CLEC lines are not part of the transaction between Heart of Iowa and Iowa Telecom, Petitioners submit that the instant Petition need not contemplate the ultimate disposition of such lines

⁶ 47 U.S.C. § 214(a).

Iowa.⁷ Petitioners submit as well that that they will provide to customers and to the Commission the requisite timely anti-slamming notices required by Section 64.1120 of the Commission's rules.

II. WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED.

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high cost support,⁸ the Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁹ Although an indirect and limited corporate relationship between Iowa Telecom and Heart of Iowa exists, the proposed sale to Heart of Iowa is an arm's length transaction.¹⁰

⁷ Copy of which is appended to this Petition as Exhibit 1.

⁸ See *MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁹ See, e.g., *Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr Bur. 1990).

¹⁰ Heart of Iowa owns 551 of 36,438 (1.5%) outstanding preferred non-voting shares, and 94 of 9351 (1.0 percent) outstanding common shares of Iowa Network Services, Inc. ("INS"), which itself owns a 57 percent equity stake in Iowa Telecom. With such a minute interest in INS, Heart of Iowa exerts no control over Iowa Telecom. Also, David Schmidt, Heart of Iowa's General Manager, will conclude his current term as Chairman of the Board of Iowa Network Services in April 2004. The position of INS Chairman of the Board is an elected position unrelated to ownership (except to the extent that only owners' representatives may be Chairman). The Chairman's duties in no way overlap or replace those of the CEO. The INS Board has no control over the sale of any of Iowa Telecom's exchanges. Mr. Schmidt's current term on the board of directors expires in March 2006.

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.¹¹ Such a result would not serve the Commission's policy objective of ensuring that carriers' actual costs are reflected in their accounting so that they can accurately set just, reasonable and non-discriminatory rates.¹² Inasmuch as Heart of Iowa's proposed acquisition results from an arm's length negotiation process with Iowa Telecom, the standards for waiver of the freeze are met in this instance.

A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.¹³ The proposed transaction will produce no such adverse impact, as Section 54.305 of the Commission's rules provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹⁴

¹¹ *Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) ("Part 36 NPRM").

¹² Iowa Telecom will adjust, pursuant to 47 C.F.R. § 61.45, its price cap prices to reflect removal of the transferred access lines, as applicable

¹³ See, e.g., *U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("*Eagle Order*"); *Norway Order*, ¶ 9.

¹⁴ 47 C F R §54.305(a).

Notwithstanding Section 54.305(a) of the Commission's Rules, however, Heart of Iowa may still be eligible to receive additional limited high cost support for the purchased access lines. First, Heart of Iowa may be eligible for limited "safety valve" support for new investments in the purchased assets.¹⁵ Second, Heart of Iowa may be eligible for additional interstate common line support ("ICLS"), which Heart of Iowa currently receives.¹⁶

Nevertheless, it is inconceivable that Heart of Iowa's additional support could rise to \$35 million—the figure that now approximates an aggregated one percent increase of annual high cost support.¹⁷ First, safety valve support, to the extent Heart of Iowa would be eligible, is capped by rule,¹⁸ and would be available in any event only for the 815 lines of the transaction. Second, Heart of Iowa currently receives only an estimated \$58.08 in annual ICLS per line. By adding an additional 815 lines to its study area, at the same per line support level, Heart of Iowa would receive only an additional estimated \$47,335 in annual ICLS.¹⁹ Accordingly, this

¹⁵ See 47 C.F.R. § 54.305(b)-(f).

¹⁶ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, Report and Order, and Report and Order, 16 FCC Rcd 19613, ¶¶ 155-157 (2001) ("MAG Order"), recon. pending*

¹⁷ USAC's most recent projections show annual high cost support exceeding \$3.5 billion. See USAC, HC01- High Cost Support Projected by State by Study Area 1Q04, online at <http://www.universalservice.org/overview/filings/2004/Q1/> ("USAC HC01")

¹⁸ See 47 C.F.R. § 54.305(b)-(f).

¹⁹ Initially, ICLS for the acquired lines would be available based on the existing per line ICLS of the acquiring company. These amounts would be subject to true up once cost and revenue data are available. Actual amounts received would be dispersed on a monthly basis and are dependent on the timing of the

transaction is a non-event for purposes of the USF ²⁰

B. State Commission Approval.

Petitioners have filed a joint Application for Approval of Discontinuance of Service and Transfer of Certificate with the IUB, in which Heart of Iowa and Iowa Telecom requested the IUB to state in its final order that it does not object to the grant of this study area waiver. ²¹ Heart of Iowa and Iowa Telecom will supplement this Joint Petition for Expedited Waivers when the IUB issues its order.

C. Granting The Waiver Is In The Public Interest.

The transfer of the three exchanges from Iowa Telecom to Heart of Iowa will promote the public interest because it will provide the customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. For 45 years, Heart of Iowa has offered its customers access to local management, local service personnel, and local service centers. Furthermore, every customer will become an owner of the Cooperative, and will be able to exercise his or her vote in the operation of the Cooperative, including election of members of the Board of Directors

Heart of Iowa intends to provide quality basic services to the exchange areas it is acquiring, and to improve the existing network where necessary. Heart of Iowa will expand to all

grant of the waiver request, closing of the acquisition, and submission of updated line counts by the acquiring company

²⁰ Heart of Iowa recognizes that as a result of the transaction, access lines in the pre-acquisition study area will be eligible for different amounts of high cost support than the access lines being acquired from Iowa Telecom. Heart of Iowa will adopt a methodology for excluding the costs associated with the acquired access lines from the costs associated with the pre-acquisition study area.

²¹ Attached as Exhibit 2.

acquired lines the availability of enhanced services, including Caller ID, voice-mail, local Internet access, and high-speed services such as DSL, the last of which Iowa Telecom does not currently offer to customers affected by the transaction. Accordingly, the public interest would be better served if these operationally distinct exchanges were separated from the exchanges to be retained by Iowa Telecom and placed in Heart of Iowa's study area.

III. WAIVER OF THE COMMISSION'S AVERAGE SCHEDULE RULES IS PROPER.

Heart of Iowa wishes to retain its average schedule status. Thus, Heart of Iowa requests a waiver of Section 69.605(c), if necessary, so that it may retain average schedule status when the Conrad, Eldora and Steamboat Rock exchanges are added to its existing average schedule study area.

Section 69.605(c) defines an "average schedule company" as a telephone company that was participating in average settlements on December 1, 1982.²² This definition has been interpreted to preclude the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without a waiver from the Commission.²³

The Section 69.605(c) definition refers expressly only to new or converted average schedule companies, and makes no explicit attempt to address the status of existing average schedule companies as they grow or contract via the addition or subtraction of subscribers or exchanges. In some instances, the Commission has not even required waivers of the Section 69 605(c) definition

²² See 47 C F R. §69 605(c).

²³ See *Wilderness Valley Telephone Company, Petition for Waiver of Section 69 605(c) and 69.3(e)(11) of the Commission's Rules*, Order, 13 FCC Rcd 4511 (Acc. Aud Div. 1998).

when existing average schedule companies, wishing to retain their average schedule status, acquired price cap or cost exchanges.²⁴

In other instances, the Commission has granted waivers of the Section 69.605(c) definition when small average schedule companies wishing to retain their average schedule status acquired additional access lines from a price cap or cost exchange. For example, the Commission granted such a waiver to Red River Telecom, Inc. when it acquired 1028 lines from Citizens Telecommunications Company of North Dakota.²⁵ The Commission granted two average schedule companies, Manti and Skyline, Section 69.605(c) waivers when they acquired 1,887 and 1,407 access lines, respectively, from Qwest, a price cap carrier.²⁶ Clarksville, an average schedule company and subsidiary of Butler-Bremer Mutual Telephone Company, similarly was granted a Section 69.605(c) waiver when it acquired 931 access lines from U S WEST, a price cap carrier.²⁷ As indicated, Heart of Iowa is acquiring only 815 access lines from Iowa Telecom.

²⁴ See, e.g., *Petitions for Waivers filed by Farmers Mutual Telephone Company, et al., Concerning Sections 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission Rules*, AAD 96-6, Memorandum Opinion & Order, 11 FCC Rcd 9380 (Acc. Aud. Div. 1996) ("Farmers Order"); *GTE Midwest Incorporated and Winnebago Cooperative Telephone Association, Joint Petition for Waiver of the Definition of Study Area Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 9 FCC Rcd 7789 (Acc. Aud. Div. 1994)

²⁵ *Dickey Order*, n.79

²⁶ *All West Order*

²⁷ See *Petitions for Waiver Filed by Alpine Communications et al. Concerning Sections 61.41(c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 12 FCC Rcd 2367, ¶ 15 (Acc. Aud. Div. 1997) ("Alpine Order"); see also, *Petition for Waivers filed by East Plains Telecom, Inc. et al., Concerning Sections 69.3(e)(11), 69.3(i)(4) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 12 FCC Rcd 24422 (Acc. Aud. Div. 1997) ("East Plains Order"), *Baltic Order* (Commission granted waiver to an average schedule affiliate of Baltic Telecom Cooperative, Inc. also an average schedule company serving 1,400 lines when the affiliate acquired 792 lines from U S WEST)

Grant of this waiver is consistent with that precedent and the Commission's goals in permitting settlements on the basis of average schedules. The special circumstances that the Wireline Competition (f/k/a Common Carrier) Bureau ("Bureau") has found to justify waivers of Section 69.605(c) fall into three broad categories,²⁸ including a category "to ensure a smooth settlement process [where] average schedule companies ... have acquired another company, and [have been allowed to merge] the combined companies ... into one average schedule study area."²⁹ Because jurisdictional separations and USF calculations are performed at the study area level, the Bureau recognized that the application of Section 69.605(c) in these instances would have the unintended effect of requiring the pre-existing company to convert from average schedule status to cost-based settlements in order for the company to be able to acquire one or more small exchanges. The Bureau determined that such an effect would be unduly burdensome.

The proposed transaction satisfies the same circumstances as those found to justify prior "smooth settlement process" category Section 69.605(c) waivers. Heart of Iowa, an existing and established average schedule company with only 2487 ILEC access lines, is acquiring three small rural exchanges (approximately 815 access lines combined) that it desires to consolidate into its existing Iowa ILEC study area as well as into its existing corporate structure. As noted in this

²⁸ See, *BPS Telephone Co., Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 13820, 13824, ¶ 10 (Acc. Aud. Div. 1997); *Jordan-Soldier Valley Telephone Company and Alpine Communications, L C*, Order, 15 FCC Rcd 21917, ¶ 13 (Acc. Pol. Div. 2000).

²⁹ *Petition for Waiver Filed by Heartland Telecommunications Company of Iowa and Hickory Tech Corp.*, Memorandum Opinion & Order, 14 FCC Rcd 13661, 13663, ¶ 4 (1999) ("*Heartland Order*"). See also, *Baltic Order*; *Petitions for Waiver Filed by Accent Communications, et al.*, Memorandum Opinion and Order, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996), *BEK Communications I, Inc. et al.*, AAD No. 95-72, Memorandum Opinion & Order, 11 FCC Rcd 10855 (Acc. Aud. Div. 1996).

Petition, the proposed transaction will create significant public interest benefits such as the expansion of improved and enhanced services in the three exchanges.

If Section 69.605(c) were applied to the proposed transaction, it could have the unintended effect of requiring Heart of Iowa to convert its existing exchanges from average schedule status to cost-based settlements. Such a conversion would be unduly burdensome to Heart of Iowa, for it would have to spend on cost studies time and effort that it heretofore has used to ensure and improve the quality of service furnished to its subscribers. Heart of Iowa tentatively estimates that it would cost approximately \$32,500 in annual recurring cost and \$37,500 in non-recurring cost to perform the required cost studies.³⁰ The high cost of completing a cost study relative to the small size of Heart of Iowa further demonstrates that waiver is warranted.

The Commission has declined to permit a waiver when a disproportionate number of the requesting carrier's lines were previously operated on a cost basis or were subject to price caps, or when a waiver would add too greatly to the number of lines that settle on an average schedule basis.³¹ For example, the Commission has found it unacceptable that only 2.5% of the total lines to be operated after a transaction were initially average schedule lines. In that order, the Commission negatively cited imbalances of 9.6 %³² and 57%.³³ Here, Heart of Iowa's current

³⁰ Such cost estimates are preliminary, and have been provided to Heart of Iowa by Martin Group. To the extent that Heart of Iowa could recover such costs from NECA pools, they would be borne by the industry.

³¹ See, e.g., *Nemont Order*, ¶ 31

³² *Nemont Order*, ¶ 32, citing *Heartland Order*, ¶¶ 7-8.

³³ *Nemont Order*, ¶ 32, citing *NebCom, Inc*, Petition for Waiver of Sections 61.41(c)(2) and 69.605(c) of the Commission's Rules, Order, 13 FCC Rcd 4487, 4492, ¶ 14 (Acc. Aud. Div. 1998).

ILEC lines constitute more than 75% of post transaction lines (when aggregated with the three exchanges' 815 lines—or 2487 of 3302) ³⁴ In *NebCom*, the Commission was concerned that the resulting study area, in which 43% of the total lines would have been converted from a cost study area, would be larger than 57% of all cost study areas. With 3302 post transaction lines, Heart of Iowa's ILEC study area would be larger than only 36% of all cost study areas.³⁵ If Heart of Iowa's CLEC lines are considered, the resulting 6046-line study area is larger than only about half—51%—of cost study areas. Accordingly, the instant transaction presents no imbalance of the types with which the Commission has been concerned.

Furthermore, after the purchase Heart of Iowa would remain one of the smaller average schedule carriers. According to USAC's first quarter 2004 data,³⁶ 505 average schedule study area codes pertain to 502 carriers, with a mean of 5190 lines per study area. With only 2487 lines currently, even by adding the additional 815 lines contemplated in the instant transaction Heart of Iowa will own and operate more than a third fewer lines than most average-schedule companies.³⁷ These 815 lines represent about three one hundredths of one percent of the some 2.6 million lines owned and operated by average-schedule carriers in the country.³⁸ If Heart of Iowa's 2744 CLEC lines are considered, the total lines to become average schedule (3559 lines),

³⁴ Considering Heart of Iowa's 2744 CLEC lines in the total results in a reduction—from 25% to 14%—in the percentage of post-transaction lines converted from price cap to average schedule.

³⁵ See USAC HC01; USAC, HC05 - High Cost Loop Projected by State by Study Area - 1Q2004, <http://www.universalservice.org/overview/filings/2004/Q1/> ("USAC HC05").

³⁶ See USAC HC01 and USAC HC05

³⁷ If Heart of Iowa's CLEC lines are considered, Heart of Iowa's resulting 6046-line study area would be only 16% larger than the mean average schedule study area (5190 lines is the mean), and 18% of all average schedule study areas would still be larger than Heart of Iowa's.

³⁸ See USAC HC01; USAC HC05

expressed as a percent of total current average schedule lines nationwide, rises slightly, to about fourteen one hundredths of one percent.

Heart of Iowa falls within the range of other average schedule companies that the Commission found did not have sufficient resources or expertise to justify conversion of their average schedule status. Further, there is no imbalance between the pre-transaction and post-transaction proportions of average schedule lines. Finally, few lines would be converted to average schedule status. Accordingly, the Commission should grant a waiver of Section 69.605(c).³⁹

Moreover, the proposed average schedule waiver will not result in unintended effects on interstate revenue requirements or in administrative burdens on the Commission or NECA.⁴⁰ Rather, with respect to its incumbent operations, Heart of Iowa can readily satisfy all three conditions that the Commission has established to avoid these impacts. First, Heart of Iowa will be a single corporate entity operating ten exchanges (rather than a parent and new average schedule subsidiary), and will report to NECA as a single entity for interstate average schedule and Universal Service Fund purposes and receive distributions on that basis. Second, because Heart of Iowa will be a single entity, there will be no possibility that either a “parent” or a “subsidiary” entity will attempt at some future date to elect cost status or Section 61.39 treatment while the other entity does not. Third, Heart of Iowa will be a single entity; absent the highly unlikely event of a comprehensive corporate reorganization, no “parent” or “subsidiary” will come under different control from the other at some future date.

³⁹ See, e.g., *Norway Order*.

⁴⁰ In an email message of November 13, 2003, NECA informed Heart of Iowa’s counsel that NECA has no objection to the instant waiver petition.

IV. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.

Heart of Iowa also requests a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation and long term support ("LTS") resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Heart of Iowa from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Heart of Iowa to file interstate tariffs, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.⁴¹

In light of the fact that Heart of Iowa is a very small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Heart of Iowa requests a waiver of Section 69.3(e)(11) to the extent necessary for it to add these exchanges to its current study area and include them in the NECA pools upon the closing date of this acquisition.

⁴¹ See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).


V. CONCLUSION

The immediate requests are directly analogous to comparable requests routinely granted by the Commission for similarly situated carriers. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby affording the affected customers the ability to benefit from the planned acquisition as soon as possible.

Respectfully submitted,

Heart of Iowa Communications Cooperative

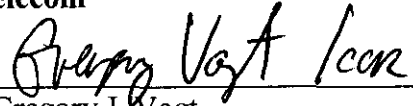
By:


David Cosson
Clifford C. Rohde
Its Attorneys

Kraskin, Lesse & Cosson, LLC
2120 L Street, N.W., Suite 520
Washington, DC 20037
(202) 296-8890

**Iowa Telecommunications Services, Inc. d/b/a
Iowa Telecom**

By:


Gregory J. Vogt
Bradley K. Gillen
Peter J. McNulty
Its Attorneys

Wiley Rein & Fielding, LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

November 26, 2003

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Heart of Iowa Communications)
Cooperative)
)
and)
)
Iowa Telecommunications Services, Inc.)
d/b/a Iowa Telecom)
)
Joint Petition for Waiver of the)
Definition of "Study Area" of the)
Appendix-Glossary of Part 36 of the)
Commission's Rules)
)
Petition for Waiver of Sections)
69.3(e)(11) and 69.605(c) of the)
Commission's Rules)

CC Docket No. 96-45

EXHIBIT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Iowa Telecommunications Services, Inc.)
)
and)
)
Heart of Iowa Communications Cooperative)
)
Application for Authorization Pursuant to)
Section 214 of the Communications Act of 1934,)
as Amended for Transfer of Control of)
the Conrad, Eldora, and Steamboat Rock)
Exchanges)
_____)

File No. _____

**APPLICATION FOR TRANSFER OF CONTROL OF THE CONRAD, ELDORA, AND
STEAMBOAT ROCK EXCHANGES**

Iowa Telecommunications Services, Inc. ("Iowa Telecom" or "Transferor") and Heart of Iowa Communications Cooperative ("Heart of Iowa" or "Transferee") (collectively the "Applicants"), by their undersigned counsel, and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the "Act"), and Section 63.04 of the rules of the Federal Communications Commission ("FCC" or the "Commission"), 47 C.F.R. § 63.04, hereby request authority to transfer control of the rural Conrad, Eldora, and Steamboat Rock exchanges (the "Exchanges") from Iowa Telecom to Heart of Iowa, a total of 815 lines. As described in this application, Iowa Telecom has agreed to sell the Exchanges to Heart of Iowa, which will continue to provide service to Iowa Telecom's former customers upon completion of the transaction

Pursuant to Section 63 04(a) of the Commission's rules, the Applicants provide the following information in support of this transaction:

(1) Applicants' Name, Address and Telephone Number

Transferor: Iowa Telecommunications Services, Inc.
115 South Second Avenue, West
Newton, IA 50208

Telephone: (641) 787-2677

Facsimile: (641) 787-2468

Transferee: Heart of Iowa Communications Cooperative
502 Main Street
P.O. Box 130
Union, Iowa 50258-0130

Telephone: (641) 486-2211

Facsimile: (641) 486-2205

(2) State of Organization

(a) Iowa Telecommunications Services, Inc. is a corporation organized under the laws of the State of Iowa.

(b) Heart of Iowa Communications Cooperative is a cooperative organized under the laws of the State of Iowa.

(3) Contact Information

All correspondence, notices and inquiries regarding this transaction should be addressed to.

Transferor: D. Michael Anderson
Vice President – External Affairs
Iowa Telecommunications Services, Inc.
P.O. Box 330
Grinnell, IA 50112

Telephone: (641) 269-7807

Facsimile: (641) 269-7376

Copies of all correspondence, notices, and inquiries should also be addressed to:

Gregory J. Vogt
Wiley Rein & Fielding LLP

1776 K Street, NW
Washington, DC 20006

Telephone: (202) 719-7401
Facsimile: (202) 719-7049

Counsel for Iowa Telecom

Transferee: David L. Schmidt
General Manager
Heart of Iowa Communications Cooperative
502 Main Street
P.O. Box 130
Union, Iowa 50258-0130

Telephone: (641) 486-2211
Facsimile: (641) 486-2205

Copies of all correspondence, notices, and inquiries should also be addressed to:

David Cosson
Kraskin, Lessee & Cosson, LLC
2120 L Street, NW, Suite 520
Washington, DC 20037

Telephone: (202) 296-8890
Facsimile: (202) 296-8893

Counsel for Heart of Iowa

(4) Ten percent (10%) Equity Shareholders

Iowa Telecommunications Services, Inc.:

Iowa Network Services, Inc.
4201 Corporate Drive
West Des Moines, Iowa 50266-5906
Citizenship: United States
Principal Business: Telecommunications
Percent Owned: 57 percent

FS Private Investments III, LLC
520 Madison Avenue
12th Floor
New York, New York 10022
Citizenship: United States

Principal Business: Financial Services
Percent Owned: 28 percent

Heart of Iowa Communications Cooperative:

None.

(5) Certification Pursuant to Rules 1.2001-1.2003

Applicants hereby certify, pursuant to 47 C.F.R. §§ 1.2001-1 2003, that to the best of their knowledge, information, and belief, no party to the application is subject to denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853.

(6) Description of Transaction

The Applicants have entered into an Asset Purchase Agreement in which Iowa Telecom has agreed to transfer its customer base and assets in the Exchanges to Heart of Iowa. Heart of Iowa currently operates as a competitive local exchange carrier ("CLEC") in the Exchanges, and currently has a majority of residential and business lines in all of the Exchanges. Of the 3,559 total lines in the Exchanges, Heart of Iowa already serves 2,744, or 77 percent. Post-consummation, Heart of Iowa will continue to offer the services currently offered to Iowa Telecom customers in these Exchanges.

(7) Geographic Description

Iowa Telecom is an independent incumbent local exchange carrier headquartered in Newton, Iowa. Iowa Telecom currently provides local exchange and exchange access service and dial-up and high-speed internet services to residential and business customers in some 300 exchanges widely distributed throughout the State of Iowa, comprising a total of some 257,000 access lines.

Heart of Iowa is headquartered in Union, Iowa. It is an established telecommunications carrier that provides incumbent local exchange and exchange access services to residential and business customers (approximately 2487 access lines total) in a cluster of small rural north-central Iowa communities: Albion, Ferguson, Green Mountain, Haverhill, Liscomb, New Providence, Union, and Whitten. Heart of Iowa presently serves the Exchanges, which adjoin its incumbent service area, as a CLEC. Heart of Iowa also offers intraLATA and interLATA (domestic and international) toll services to its local service customers. Finally, Heart of Iowa offers a range of vertical voice services, as well as dialup and high speed (DSL) Internet access services to customers in its service areas.

A map of Iowa highlighting the Exchanges, and the local service areas of Iowa Telecom and Heart of Iowa is attached as Exhibit I.

(8) Streamlined Treatment

The Applicants do not request streamlined treatment for this transaction.

(9) Other Related Applications Before the Commission

None.

(10) Statement of Imminent Business Failure

Not applicable

(11) Separately Filed Waiver Requests

The Applicants have filed study area, average schedule, and NECA carrier common line tariff waiver requests concurrently with this Application.

(12) Public Interest Statement

This transaction is a direct outgrowth of the market realities in these three Exchanges, and reflects realities that largely predate Iowa Telecom's 1999 acquisition of its Iowa properties. Coupled with concrete benefits that will accrue to affected consumers, and both Applicants, the proposed transaction clearly serves the public interest, convenience and necessity.

Heart of Iowa operates in a handful of communities in north-central Iowa, focusing on rural farming communities. As a cooperative, Heart of Iowa offers local ownership. Over time, Heart of Iowa has expanded its operations as a facilities-based competitor to similar geographically-adjacent, rural farming communities. To that end, Heart of Iowa's growth has been directed at the three Exchanges at issue in this Application. In fact, Heart of Iowa now provides service to a substantial majority of lines in these Exchanges: 77 percent of the 3,559 lines (84 percent of the 884 business lines). In effect, Heart of Iowa has become the primary carrier in these Exchanges.

In contrast, Iowa Telecom operates a large number of rural exchanges, widely distributed throughout the state. When Iowa Telecom acquired these Exchanges from GTE Midwest Incorporated, Heart of Iowa was already active as a facilities-based competitor in these Exchanges.

This transaction is an outgrowth of the current market realities of these Exchanges, and allows Heart of Iowa to become the incumbent provider of local exchange service in these exchanges. The transaction will benefit consumers in these Exchanges. Specifically, affected customers will be able to purchase from Heart of Iowa high-speed Internet access over DSL, a service it provides to its CLEC customers but which Iowa Telecom has not yet provided in these Exchanges. Further, the transaction will provide affected customers with new services from a locally based carrier specializing in meeting the communications needs of the few rural

communities it serves. For 45 years, Heart of Iowa has offered its customers access to local management, local service personnel, and local service centers. Every customer will become an owner of the Cooperative, and will be able to exercise his or her vote in the operation of the Cooperative, including election of members of the Board of Directors.

In addition, Heart of Iowa is strengthened as a result of this transaction, achieving new economies of scale, a more cohesive and rational service area, and administratively simpler operations. Iowa Telecom also is strengthened through subtraction. The transaction will permit Iowa Telecom to focus greater resources and facilities on its remaining exchanges. As a result, Iowa Telecom will be better positioned to provide new services, *i.e.*, broadband, to its customers in a shorter timetable in its rural exchanges. Each party will thus be free to focus its investments and offerings on its exchanges, which require attention and development. Interrelated to that commitment, each party has agreed to refrain from acting as a CLEC in the other's service area for a five-year period.

Moreover, this transfer is consistent, albeit on a far smaller scale, with other transactions approved by the Commission that involved overlapping and adjacent service areas.¹ The same considerations apply in this instance. As in prior approved transfers, these Exchanges are served by a number of other inter-modal competitors active in the area —wireless providers U.S.

¹ *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. For Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 22, 63, and 90 of the Commission's Rules, Memorandum Opinion and Order*, 16 FCC Rcd 15293 ¶ 9 (Comm. Car. Bur. 2001) ("Chorus") ("In this case, TDS and Chorus are actual competitors for local exchange and exchange access services in the Madison area."). *Joint Application of Global Crossing Ltd., and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules, Memorandum Opinion and Order*, 16 FCC Rcd 8507 (Comm. Car. Bur., Int'l Bur., Cable Serv. Bur., Wireless Bur. 2001) ("Global Crossing/Citizens") (adjacent service areas in four states).

Cellular and Midwest Wireless and cable operator Mediacom—thereby mitigating any negative competitive impact of this transaction. In addition, the closest population center to the Exchanges, Marshalltown, is served by a large Bell Operating Company, Qwest.² Moreover, unlike in those instances, this transaction is not a full-fledged combination of competing providers. Rather, this transfer involves only three small exchanges being transferred between two small providers, both of which will be stronger and more vibrant as a result of the transfer.³ Accordingly, consistent with precedent, the proposed transaction will serve the public interest, convenience and necessity by strengthening two small providers, and by directly benefiting the impacted consumers.

² See *Chorus* at n.26 (“SBC-Ameritech, the largest incumbent LEC in Wisconsin, is the incumbent LEC in the City of Madison and some of the surrounding communities.”).

³ In *Global Crossing/Citizens*, the Commission highlighted the relative size of the exchanges in question, which were equal to, if not much larger, than the Exchanges at issue in this Application. See *Global Crossing/Citizens* at ¶ 7.

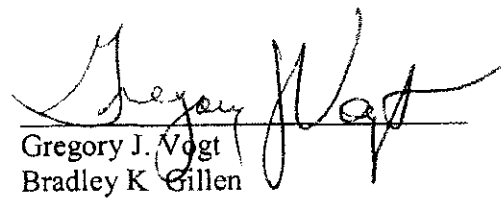
CONCLUSION

For the reasons stated herein, Iowa Telecom and Heart of Iowa respectfully request that the Commission promptly grant their Application for consent to transfer the Conrad, Eldora, and Steamboat Rock exchanges from Iowa Telecom to Heart of Iowa.

RESPECTFULLY SUBMITTED,

David Cosson
Clifford C Rohde
KRASKIN, LESSE & COSSON, LLC
2120 L Street, NW, Suite 520
Washington, DC 20037
(202) 296-8890

*Counsel for Heart of Iowa
Communications Cooperative*



Gregory J. Vogt
Bradley K. Gillen
Peter J. McNulty
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

*Counsel for Iowa Telecommunications
Services, Inc.*

November 26, 2003

DECLARATION OF DAVID L. SCHMIDT

I, David L. Schmidt, General Manager of Heart of Iowa Communications Cooperative, ("Heart of Iowa") do hereby certify under penalties of perjury that to the best of my knowledge, information, and belief, Heart of Iowa, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of Heart of Iowa as specified in Section 1.2003(b) of the Commission's Rules, is not subject to denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

Date 11/26/03



David L. Schmidt
General Manager
Heart of Iowa Communications Cooperative

DECLARATION OF D. MICHAEL ANDERSON

I, D. Michael Anderson, Vice President – External Affairs of Iowa Telecommunications Services, Inc., ("Iowa Telecom") do hereby certify under penalties of perjury that to the best of my knowledge, information, and belief, Iowa Telecom, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of Iowa Telecom as specified in Section 1.2003(b) of the Commission's Rules, is not subject to denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

Date 11/25/03



D. Michael Anderson
Vice President – External Affairs
Iowa Telecommunications Services, Inc.

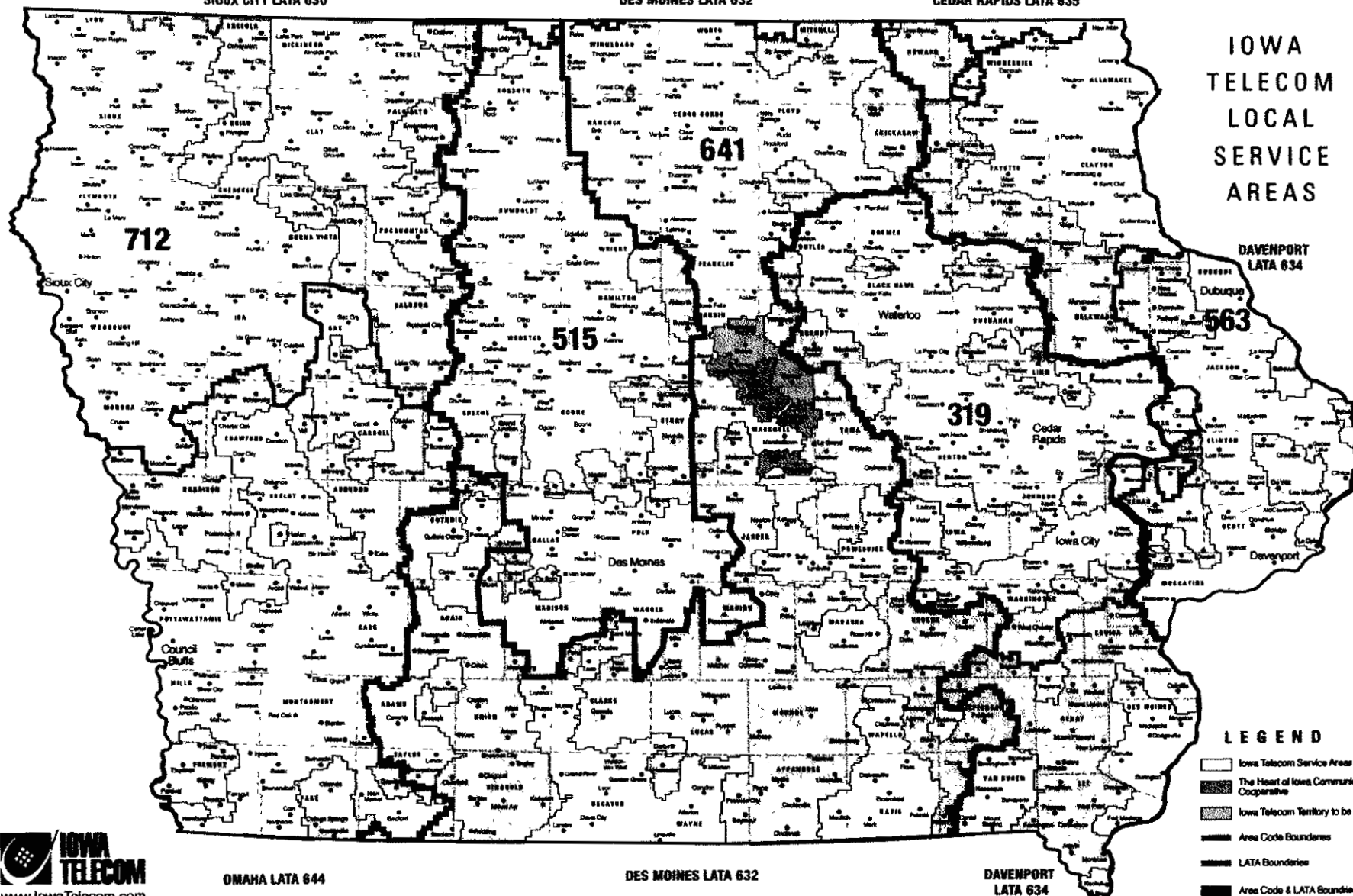
SIoux CITY LATA 630

DES MOINES LATA 632

CEDAR RAPIDS LATA 635

IOWA TELECOM LOCAL SERVICE AREAS

DAVENPORT
LATA 634



LEGEND

- Iowa Telecom Service Areas
- The Heart of Iowa Communications Cooperative
- Iowa Telecom Territory to be Transferred
- Area Code Boundaries
- LATA Boundaries
- Area Code & LATA Boundaries



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